

# EXHIBIT 1

11/21/2025

State of New Mexico, Ex Rel. Raul Torrez v. Meta Platforms Inc., et al.

Audio Transcription

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FIRST JUDICIAL DISTRICT COURT  
COUNTY OF SANTA FE  
STATE OF NEW MEXICO

STATE OF NEW MEXICO, EX	)
REL., RAUL TORREZ,	)
ATTORNEY GENERAL,	)
	)
	) No. D-101-CV-2023-02838
Plaintiff,	)
	)
vs.	)
	)
META PLATFORMS, INC.;	)
INSTAGRAM, LLC; META	)
PAYMENTS, INC.; and META	)
PLATFORMS TECHNOLOGIES,	)
LLC;	)
	)
	)
Defendant(s) .	)
	)

## AUDIO TRANSCRIPTION

Date of Transcription:

26th day of November 2025

- - -

Stated Date of Audio Recording:

21st day of November 2025

TRANSCRIBED BY:

Ana Maria Gallegos

RPR, CA CSR No. 9246, NM CSR No. 190

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(Information provided by Court Monitor Monserrath  
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2 - - -

3 (The following is a transcription of  
4 audio file number 1 of 1.)

5 THE COURT: The Court calls State of  
6 New Mexico versus Meta Platforms Inc., et al.,  
7 Case number D-101-CV-2023-02838.

8 I'm sorry we're starting a little bit  
9 late. But you might understand that I had  
10 received some additional authorities in the matter  
11 that I noted this morning in addition to what I  
12 had already reviewed to be ready for this morning.  
13 So sorry, at least I was working on the matter and  
14 not some random other issue.

15 With that, will you please state your  
16 appearances for the record.

17 MR. ACKERMAN: Yes, Your Honor.

18 David Ackerman, Motley Rice for plaintiff,  
19 State of New Mexico. With me is Linda Singer and  
20 Jenna Forster from Motley Rice and James Grayson,  
21 Mark Noferi, and Cassandra Courier (phonetic) from  
22 the New Mexico Department of Justice, including  
23 probably others who I have neglected. But those  
24 would be the ones who will have speaking roles  
25 today.



1 THE COURT: Thank you.

2 MR. ANDERSON: Okay. Good morning, Your  
3 Honor.

4 John Anderson of Holland & Hart along with  
5 Kevin Huff, Alex Parkinson, Ana Hall, and Thomas  
6 Schultz of Kellogg Hansen. And Timothy Hester  
7 from Covington and Burling on behalf of Meta.

8 MR. MONTANO: Good morning, Your Honor.

9 This is Larry Montano of Holland & Hart.  
10 And with me here today is Faye Teller of Munger,  
11 Tolles & Olson on behalf of Snap.

12 THE COURT: All right. Thank you, all.

13 First, it's not on the notice, but I just  
14 wanted to let you know, thank you for your  
15 submission of the supplemental jury questionnaire.

16 I did review that. I have approved it.  
17 And the order is in process.

18 So, I guess, knowing the time constraints  
19 that you all are under, you can proceed, knowing  
20 that that is the status, if you want to get things  
21 to the jury services folks and the like. And  
22 hopefully, you will see it pop through from the  
23 clerk's office. But that's where it's at at the  
24 moment.

25 So I did want to clear up any stressful

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1 confusion or uncertainty about the status of that  
2 matter.

3 UNIDENTIFIED SPEAKER: We will do that.  
4 And thank you, Your Honor. And see, the parties  
5 can get along.

6 THE COURT: Yeah, it's only when I  
7 instigate, you know, conflict that there is  
8 issues, I know.

9 UNIDENTIFIED SPEAKER: Your Honor, you are  
10 not the one who instigates --

11 THE COURT: Oh, I don't know. All right.  
12 Let's see. We've got three matters noticed up for  
13 today. But let's see, any other issues I should  
14 be aware of or it would be helpful to address  
15 other than I've got plaintiff's motion to compel  
16 depositions of Kristin Zobel, and Elaine Dai.

17 I've got plaintiffs' motion to compel  
18 non-party Snap to produce time spent data and  
19 market share documents. And dispute regarding  
20 Sattizahn deposition privilege issues.

21 Any other issues floating around that it  
22 would be helpful to address.

23 MR. ACKERMAN: Your Honor, I don't think  
24 there are any other issues from the State. On the  
25 order, I might suggest that we do Snap first so

1 that Mr. Montano and Ms. Teller maybe can get on  
2 with their morning.

3 And then the other two matters may involve  
4 discussion of information designated as  
5 confidential by Meta. So I don't know how we want  
6 to deal with that, if you might want to have  
7 Ms. Sossman create a private link like we did last  
8 time.

9 THE COURT: All right. All right. Thank  
10 you for that alert.

11 MR. ANDERSON: Your Honor, from Meta, we  
12 have an issue that we just want to raise at the  
13 end of an impending issue that we just want to  
14 alert Your Honor to. But we can do that at the  
15 end.

16 THE COURT: All right. Well, it sounds  
17 like there is no appetite to hold Mr. Montano  
18 hostage for the morning. So let's move on to the  
19 motion to compel non-party Snap first.

20 MR. ACKERMAN: All right. And Your Honor,  
21 David Ackerman, Motley Rice, I will be arguing  
22 this on behalf of the State.

23 Your Honor, we believe this is a fairly  
24 straightforward motion concerning two categories  
25 of documents. The first is national or New Mexico

1 user data that Snap previously produced in the  
2 MDL, which includes daily average user or time  
3 spent data.

4 The second are documents, I believe,  
5 concerning market share relied on by one of the  
6 state's experts, Dr. Chandler, in connection with  
7 expert reports that he submitted in the MDL and  
8 other litigations, but that are not at this point  
9 available to him in this litigation.

10 Both of these categories of documents are  
11 relevant to the State's case with respect to the  
12 Snap national or New Mexico user data. Meta seeks  
13 to apportion liability or causation to other  
14 entities or other causes, including to its  
15 competitor Snap. We noted in our brief on page 63  
16 of the affirmative defenses, affirmative defenses  
17 where Meta has made this assertion, questioning in  
18 depositions that occurred just recently has  
19 focused on Snap and including state allegations in  
20 Snap -- against Snap brought in a separate  
21 litigation.

22 Snap's user data is relevant to the  
23 State's ability to defend itself against those  
24 affirmative defenses. If a party is seeking to  
25 apportion liability to a third party, it is

1 helpful to the plaintiff to know what that third  
2 party's market share is. That type of data would  
3 be reflected in Snap's daily average user or time  
4 spent data, which we then could compare against  
5 Meta's data. And this is data -- to be clear,  
6 Snap has already produced in the MDL. We are not  
7 asking Snap to create anything new for this  
8 litigation.

9 Now, Snap asserts that the information is  
10 somehow irrelevant because Meta doesn't have it or  
11 Meta didn't request it. It's both untrue and  
12 unconvincing.

13 It's untrue because Meta has this document  
14 in the MDL. Snap produced it there. Frankly, the  
15 fact that Meta hasn't requested it here may tell  
16 us something.

17 And regardless, it doesn't somehow render  
18 the data irrelevant. The State cannot predict  
19 what evidence Meta will or will not use to prove  
20 its affirmative defenses, but the State is  
21 entitled to be able to obtain evidence for use in  
22 defense to those defenses.

23 And that is precisely the purpose of the  
24 subpoena. Indeed, the fact -- and that is why the  
25 information is discoverable.

1 With respect to the material relied on by  
2 Dr. Chandler, that is also relevant. Dr. Chandler  
3 opines regarding aspects of the social media  
4 market, and including financial incentives for  
5 Meta to engage in the conduct that is the basis of  
6 the State's complaints. Now, part of his report  
7 seeks to estimate revenue attributable to youth  
8 using a model he adapted from peer reviewed  
9 literature.

10 The original model that Dr. Chandler used,  
11 only -- it used only Meta's data. But his work in  
12 other jurisdictions, including in the MDL, relied  
13 on data from multiple defendants. And that is why  
14 the State sought production of that -- of data  
15 already produced in the MDL or in the California  
16 consolidated proceedings to refine Dr. Chandler's  
17 opinions.

18 And just to make sure that the record is  
19 clear, the total revenue in Dr. Chandler's  
20 original New Mexico model for Instagram for the  
21 multi-year model is similar to the total revenue  
22 estimated in the MDL. But there are differences  
23 in how the revenue is distributed across the  
24 years. And what we believe is that the more data  
25 available to the model, including data from Meta's

1 competitors, the more refined the results are.

2 This is not a change to Dr. Chandler's  
3 model, it is merely an additional input.

4 It also is relevant because it follows  
5 arguments that his model here was somehow flawed  
6 because it was lacking information that was  
7 produced in other litigations.

8 So Snap's argument that Dr. Chandler has  
9 already issued an opinion misses the mark.  
10 Because even though his existing analysis is and  
11 remains reliable, additional data that  
12 Dr. Chandler already has access to in other  
13 proceedings will only bolster his opinion.

14 So that deals with relevance.

15 The other issue addressed in the briefs is  
16 undue burden. And Your Honor, there is no undue  
17 burden here.

18 All of the documents the State is  
19 requesting from Snap already have been produced in  
20 other litigation. There is no physical or  
21 technical burden. All Snap has to do is take its  
22 existing files and unload them to our vendor,  
23 where they can then be downloaded. If they want  
24 to renumber the documents, they can do that as  
25 well.

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1 But this is not a matter where we are  
2 asking Snap to re-query its files or create new  
3 documents.

4 To the extent there are concerns about  
5 confidentiality, that is why we have a protective  
6 order in this case. The protective order in this  
7 case has both confidential and highly confidential  
8 designations and if for some reason those aren't  
9 sufficient, Snap can propose changes to the  
10 protective order, which we can -- which we can  
11 consider. Because certainly the protective orders  
12 in the MDL or in the California proceedings are  
13 sufficient because that is where Snap has already  
14 produced this data in cases where Meta is a  
15 co-defendant.

16 So with that, Your Honor, we believe the  
17 motion to compel should be granted and I will  
18 yield if the Court has any questions.

19 THE COURT: I do not at the moment.

20 Mr. Montano.

21 MR. MONTANO: Good morning, Your Honor.  
22 Ms. Teller will be delivering the argument for  
23 Snap.

24 THE COURT: All right. Ms. Teller.

25 MS. TELLER: Good morning, Your Honor.



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1 And thank you very much.

2 Faye Paul Teller for Snap from Munger,  
3 Tolles & Olson.

4 In short, the State's request is not  
5 proportional because the State has not  
6 sufficiently articulated why either category  
7 requested documents is relevant. And both are, of  
8 course, very sensitive business records.

9 The State's argument simply proves too  
10 much while saying relatively little about the  
11 relevance of these documents. The State relies  
12 heavily on the supposed lack of burden. Because  
13 Snap has produced this information in other  
14 litigation, there is no burden to producing it in  
15 this proceeding.

16 The State apparently thinks it is entitled  
17 to go on a fishing expedition for anything from a  
18 third party as long as they can show the third  
19 party produced it somewhere before. But that is  
20 not the standard.

21 The State is ignoring Snap's significant  
22 interest in protecting its sensitive and  
23 confidential business information. And we believe  
24 has not made a persuasive showing as to why it  
25 needs that information in this case against Meta,

1 particularly where the expert has already rendered  
2 opinions without it.

3 Taking relevance first, to us, the State  
4 has never clearly articulated why this information  
5 is relevant, particularly as to Snap's DAU data.

6 They've gestured at method's affirmative  
7 defenses. I think Mr. Ackerman referred to what  
8 they preserved in their answer regarding  
9 apportionment or comparative fault. And then they  
10 claim that the internal documents will help their  
11 experts analysis. We believe this is not an  
12 adequate explanation of relevance in this  
13 situation.

14 Regarding the affirmative defense, our  
15 understanding is that fact discovery is closed,  
16 that expert discovery is nearly complete. I  
17 believe I saw that summary judgment motions have  
18 been filed. And it's our understanding that Meta  
19 has not put forward evidence on this affirmative  
20 defense for which it has the burden on these  
21 theories of apportionment or contributory  
22 liability.

23 In the State's brief, I will note, it  
24 didn't argue otherwise, particularly in its reply.  
25 Regarding Mr. Chandler's revenue model, the

1 State's vague descriptions of why these documents  
2 are relevant is no moment. The State has never  
3 explained why it needs Snap's data to model Meta's  
4 revenue.

5 I did look at the model that the expert  
6 Mr. Chandler is using. The article that it cites  
7 uses other third parties, like Twitter, whose  
8 information he has not sought to include in this.  
9 So Snap, as a third party, should not have their  
10 confidential information used to improve or  
11 bulletproof his model. We're not a party here.

12 The current state of the record suggests  
13 this evidence is not needed to rebut any  
14 affirmative defense and Mr. Chandler has been able  
15 to put forward his opinions without the internal  
16 documents they are now seeking.

17 Turning to burden, the question is one of  
18 proportionality. While relevance is broad, the  
19 strength of the State's arguments should be  
20 weighed against the burden to Snap. And here, as  
21 I've explained, we think that the argument as to  
22 relevance is weak and speculative.

23 The detailed information Snap seeks about  
24 daily and monthly active users on its platform is  
25 highly competitive -- competitively sensitive

1 information and closely protected by the company,  
2 as demonstrated by the fact that this information  
3 is not available in the public domain.

4 In the MDL where this information was  
5 produced, it was subject to strict confidentiality  
6 provisions that were heavily negotiated.

7 I understand the State is willing to  
8 entertain such provisions here, but it doesn't get  
9 around the fact that we are not a party in this  
10 case. In fact, the State has a separate lawsuit  
11 against Snap, but we are not a party here.

12 And that gets me to my last point. As the  
13 target of a separate lawsuit by the State, Snap  
14 remains very concerned about the State's effort to  
15 obtain and analyze our data in a forum where we  
16 have no ability to challenge that analysis.

17 As explained in our opposition, the expert  
18 here, who we are discussing, rendered opinions in  
19 the MDL where we are a party and they were  
20 challenged, they were deeply flawed.

21 Snap has a strong interest in having the  
22 ability to challenge the State's analysis of its  
23 data that it may later use against it.

24 And with that, Your Honor, I will stop,  
25 unless the Court has any questions.

1 THE COURT: Are there any protective  
2 provisions in the MDL agreement? Well, I guess  
3 maybe I should back up and ask.

4 Have you seen the protective order in this  
5 matter?

6 MS. TELLER: I believe I have, Your Honor.  
7 And it's different than the MDL because in the  
8 MDL, we have competitor co-defendants. So there  
9 are some additional provisions that limit how the  
10 documents can be shared among the parties.

11 THE COURT: Right. And I must confess, I  
12 was assuming as much. And so I was right. If  
13 those sorts of provisions were adopted in an order  
14 of this court, noting that there is a competitor  
15 involved, if I understand the industry correctly,  
16 is that something that would help address and  
17 perhaps mitigate some of the concerns of Snap?

18 MS. TELLER: It definitely addresses some  
19 of the concerns. I think what it doesn't address  
20 is the fact that the data is being analyzed  
21 without our understanding of how it's being used.

22 So that part of it it would not address.  
23 But I agree with you that that would address  
24 concerns in terms of exposure to competitors.

25 Of course, and I'm sure Your Honor has

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1 heard this argument before, but I've been involved  
2 in many cases, particularly here where we're  
3 getting ready for trial, where these documents are  
4 protected until they get used at trial. And so  
5 we're concerned about sort of what will happen  
6 with these down the line. And I know now that is  
7 just a few months away.

8 THE COURT: All right. Thank you very  
9 much.

10 MS. TELLER: Thank you, Your Honor.

11 THE COURT: Mr. Ackerman, any follow-up?

12 MR. ACKERMAN: Just a few brief points,  
13 Your Honor.

14 Your Honor has mentioned frequently  
15 New Mexico's broad relevance standards that apply  
16 here as well.

17 We disagree with the description of the  
18 State's subpoena as a fishing expedition. We have  
19 targeted requests for two categories of documents.  
20 It's not a fishing expedition at all. With  
21 respect to Meta's affirmative defenses, counsel  
22 raised whether Meta has put forth information in  
23 support of those affirmative defenses.

24 My understanding, and counsel for Meta can  
25 confirm it if they would like, is that Meta has

1 not waived or withdrawn those affirmative defenses  
2 and their time to put forth their evidence is at  
3 trial. Their time to gather the evidence is now.  
4 And that is why we're seeking evidence from Snap.

5 Finally, with respect to the questions  
6 about the ability to challenge analysis of the  
7 data, I mean, I think that is, number one, true of  
8 any third party. To the extent any data gets used  
9 against Snap, they will have the ability to  
10 challenge that analysis if it gets used in front  
11 of Judge Wilson.

12 So the extent to which they -- they don't  
13 have standing to object at a trial here.  
14 Obviously confidentiality is a different issue and  
15 we can cross that bridge when we get to it.

16 But as the Court noted, to the extent we  
17 need to modify the protective order, the State is  
18 willing to do so.

19 THE COURT: All right. Thank you.

20 All right. So it is true in this matter,  
21 just like every other discovery issue in this  
22 case, I am applying New Mexico's broad discovery  
23 standards. What I understand from argument and  
24 from the filings is that the State is not asking  
25 for Snap to create any new documents or to

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1 undertake any new substantive analysis, but rather  
2 to produce, subject to the subpoena, existing  
3 documents that were previously produced in another  
4 matter.

5 So on that basis, the Court finds that the  
6 burden to benefit balancing analysis is in favor  
7 of granting the plaintiff's motion. The Court  
8 will require that the provisions in the MDL  
9 related to protecting Snap's data from competitors  
10 be incorporated into -- and I don't know if you --  
11 because I will leave it to you all to confer, if  
12 you want to modify the existing protective order,  
13 or it seems as if perhaps entering a new order  
14 that tracks the MDL protections and expressly  
15 covers Snap's documents might be the clearest way  
16 to go.

17 But you all, no doubt, are masters of a  
18 litigation universe that I only live in.

19 So with that, I think that my point is  
20 those protections in the MDL, those provisions  
21 need to be incorporated into this matter in the  
22 clearest possible way to protect that data from  
23 competitor use as it was in the MDL.

24 And if you decide to go down the road of  
25 particularly a new protective order that is



1 applicable to the Snap documents, if you would  
2 please, I guess, get that to me at your earliest  
3 convenience, that would be extremely helpful.

4 I will -- again, taking my moment to  
5 altogether too frequent over-share, I am pretty  
6 work focused until probably about noon Wednesday.  
7 And then I will be, if at all possible, much less  
8 so after that for a bit.

9 So if you could get it to me before then,  
10 I would endeavor to get that entered.

11 MR. ACKERMAN: Thank you, Your Honor.

12 THE COURT: Any ambiguities, knowing that  
13 you all know many more details about this matter  
14 than I do, anything I've left ambiguous that is  
15 going to make drafting an order, Mr. Ackerman, or  
16 working on the protective order, counsel,  
17 avoidably annoying?

18 MR. ACKERMAN: Nothing from the State,  
19 Your Honor.

20 MS. TELLER: Nothing from Snap at this  
21 time, thank you, Your Honor.

22 THE COURT: All right. Well, then, thank  
23 you for your briefing on this and also your  
24 argument, as it true of many issues in this case,  
25 not just extremely helpful, but essential to

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1 allowing me to understand it.

2 So thank you very much for that.

3 MS. TELLER: Thank you for the  
4 opportunity, Your Honor.

5 THE COURT: All right. So with that then,  
6 let's see, Ms. Teller and Mr. Montano, you are by  
7 no means kicked off the Google Meet, but you are  
8 excused any time you want to go.

9 MR. MONTANO: Thank you, Your Honor.

10 THE COURT: All right. Then with respect  
11 to motions one or three, is there a preference as  
12 to Zobel, Dai, or the Sattizahn deposition?

13 MR. HESTER: Your Honor, Timothy Hester  
14 for the State -- for Meta, I'm sorry. I think it  
15 may make more sense for us to start with the  
16 Zobel/Dai motion.

17 THE COURT: Okay.

18 MR. ANDERSON: But obviously be guided by  
19 what the Court prefers.

20 THE COURT: Well, I -- again, I think the  
21 Court prefers to proceed in a manner that makes  
22 sense and appreciates your input into just what  
23 that constitutes. So thank you.

24 All right. We'll go with plaintiff's  
25 motion to compel depositions of Kristin Zobel and

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1 Elaine Dai.

2 MR. ACKERMAN: Your Honor, before we  
3 start, as I noted earlier, we do believe this  
4 motion may contain discussion of confidential  
5 information. And so I want to make the -- we had  
6 modified Meta about this. I don't know how the  
7 Court wishes to proceed.

8 THE COURT: All right. Well, so, let me  
9 ask. Mr. Hester, for your argument, is there a  
10 way to make it without delving into that  
11 information in this public forum or do we need to  
12 figure something else out?

13 MR. HESTER: From my perspective, yes,  
14 Your Honor, from the argument Meta is making, I  
15 don't think it's going to turn on disclosure of  
16 any confidential information. But I'm not sure  
17 whether the State has in mind that it needs to  
18 speak about some of Meta's confidential documents.

19 THE COURT: All right. So Mr. Ackerman,  
20 what I understood you to say is you were concerned  
21 about Meta's ability to present its motion.

22 MR. ACKERMAN: Your Honor, I apologize if  
23 I had misspoken. What I'm concerned about is  
24 disclosure of information that has been designated  
25 as confidential by Meta. Ms. Forster will be

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1     arguing this motion and I think we do intend to  
2     reference some documents that have been designated  
3     as confidential. But she will confirm that.

4             MS. FORSTER: That's right, Your Honor, I  
5     think out of an abundance of caution, it's  
6     probably safest to do this behind closest doors.

7             THE COURT: All right. Well, then let  
8     me -- am I correct, Mr. Hester, that you will not  
9     be referencing protected or confidential  
10    information during your argument.

11            MR. HESTER: That's right, Your Honor,  
12    unless I have to respond to something that the  
13    State has to say.

14            THE COURT: All right. Well, again,  
15    attempting to make everything that can be public  
16    public, what I would propose to do is then allow  
17    you to argue, Mr. Hester, here in the open  
18    proceeding, and then shift over to a sequestered  
19    link after that, or if I'm unable to produce a  
20    sequestered link because I am ridiculously relying  
21    on Ms. Sossman for that, then we will figure  
22    something out. Or maybe it's possible if any of  
23    you have anyone that can produce a sequestered  
24    link whilst I'm on the bench, that would be great  
25    too.

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1 But I'm stuck at the moment.

2 MS. FORSTER: Your Honor, I think I can  
3 make this easier for you.

4 Given that it's Your Honor's preference  
5 that we do this on the public link, I think I can  
6 restrict the facts that I reference in my argument  
7 to the whistleblower testimony and to the  
8 declarations that were filed publicly in  
9 connection with the briefing. So I think we  
10 should be good to go.

11 THE COURT: Okay. Well, thank you for  
12 modifying then. Because I do endeavor, where  
13 possible, to make everything that can be public  
14 public without, again, damaging parties and the  
15 like with improper disclosure.

16 So we will stay on the public link.

17 And Mr. Hester.

18 MR. HESTER: Thank you, Your Honor.

19 So the State is seeking the extraordinary  
20 outcome of being able to depose two in-house  
21 lawyers about legal advice they provided to Meta  
22 researchers.

23 The State is not seeking to ask about  
24 research policies or practices. It could ask  
25 researchers about those questions.

1           What the State is seeking to ask these  
2       lawyers about is the legal advice they provided to  
3       company researchers.

4           This is not permissible under the  
5       New Mexico rules. The State is only entitled to  
6       discovery of material that is not privileged.

7           Now, the State's arguments for piercing  
8       the privilege are refuted by the sworn  
9       declarations that we've submitted from these two  
10      lawyers.

11          And as the State agrees in its reply brief  
12      at tics (phonetic), if a party claiming the  
13      privilege rebuts the prima facie showing by  
14      providing a sufficient explanation for the  
15      attorney's conduct, then the privilege remains.  
16      That is the Gutter case out of the Southern  
17      District of Florida that both sides have relied  
18      on.

19          Allowing the State to pierce Meta's  
20      privilege based on the untested assertions of a  
21      non-attorney whistleblower is a dramatic departure  
22      from New Mexico rules prohibiting discovery of  
23      privileged materials.

24          And I should mention, the whistleblowers  
25      were counting his impressions of advice received

1 years ago in many cases. He has no legal  
2 background to know the bases by which the advice  
3 was being given or the reasons for the advice.

4 Those reasons come from the lawyers. And  
5 the declarations that we've submitted from these  
6 two lawyers directly contradict any suggestion  
7 that there was either a crime or fraud here or  
8 that this was business advice.

9 In particular, the State makes two  
10 arguments. First argument is that these lawyers  
11 were simply providing business advice and,  
12 therefore, they are entitled to ask what the  
13 advice was.

14 That is directly contradicted by these  
15 declarations, which state clearly that their role  
16 was solely to provide legal advice. And they also  
17 state clearly, I did not provide business advice.  
18 These were the sworn declarations from the two  
19 lawyers.

20 There is no factual basis for the State's  
21 argument that they were giving business advice.

22 And the State also claims that a  
23 November 2021 presentation by Ms. Dai was not  
24 legal advice because it was made to scores of  
25 employees. But it was advice about the

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1 application of the attorney/client privilege and  
2 the fact that the legal advice was given to a  
3 group of researchers doesn't alter the existence  
4 and the application of attorney/client privilege.

5 The State cites cases involving business  
6 policies that merely had input from lawyers. But  
7 here we've got legal advice being provided by  
8 lawyers to a group of employees.

9 And that is a very different situation  
10 from the cases the State relies on. And in  
11 particular, none of these cases permitted a  
12 deposition of a lawyer who provided legal advice  
13 on business policies. They don't support the  
14 State's argument somehow that it's entitled to  
15 depose lawyers about their legal advice. And here  
16 we have a very very clear statement from both of  
17 these lawyers in their declarations that that is  
18 what their role was, solely to provide legal  
19 advice.

20 On the second exception the State argues  
21 or the second premise, the State argues that all  
22 of the legal advice given by these lawyers to the  
23 company is subject to the crime/fraud exception.  
24 And the State asserts in its reply, without any  
25 factual support, that these lawyers were, quote,



1 inserting outside false statements, and, quote,  
2 blocking research; which is not correct, not true.  
3 That is not an accurate statement of what they  
4 were doing. Those assertions by the State have no  
5 factual support.

6 And again, they're directly contradicted  
7 by the declarations of these two lawyers, who  
8 explain that the advice they were giving was:  
9 First, to ensure compliance with data collection  
10 laws; second, how to structure research studies  
11 and questions to mitigate litigation risk; third,  
12 how to draft summaries of research findings in a  
13 way that avoided implying a legal conclusion.

14 But they also specifically say, quote,  
15 they did not block research and they also  
16 specifically say that they did not insert false  
17 statements into documents and they specifically  
18 dispute and make clear they did not direct the  
19 destruction of research data or findings.

20 So the State has no factual basis for  
21 making this very broad claim of an application of  
22 the crime/fraud exception.

23 And the State does not dispute that the  
24 crime/fraud exception only applies to  
25 communications in furtherance of a crime or a

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1 fraud. And that is stated very clearly in  
2 Rule 11-503(d)(1), the attorney/client privilege  
3 is vitiated only when the legal advice is used to  
4 further a, quote, crime or fraud.

5 The State does not even claim there has  
6 been a crime. And the State has no evidence of  
7 fraud, let alone communications in furtherance of  
8 a fraud.

9 The declarations from Ms. Dai and  
10 Ms. Zobel confirm they were providing conventional  
11 legal advice about research, not engaged in a  
12 crime. Ms. Zobel stated she does not instruct  
13 research to alter the designs of studies and,  
14 quote, does not tell researchers what research to  
15 conduct, because the researchers make those  
16 decisions.

17 Ms. Zobel states that she advised  
18 researchers on how to comply with legal  
19 regulations and how imprecise language in research  
20 reports may increase litigation risk. And they  
21 did not instruct researchers to delete research  
22 data unless this was necessary to ensure  
23 compliance with privacy laws or in accord with any  
24 applicable Meta privacy policies.

25 So again, the factual premise of this

1 argument for crime/fraud is simply refuted by the  
2 declarations of these lawyers. And once refuted,  
3 the privilege remains in place. There is no  
4 evidence for the State's arguments about the  
5 application of crime/fraud and these declarations  
6 disprove the State's theory of fraud.

7 Now, the State makes a claim that Meta  
8 committed, quote, fraud on the Court by deleting  
9 research data. But they have no evidence that  
10 they advised -- that Ms. Dai and Ms. Zobel  
11 instructed researchers to delete data. And to the  
12 contrary, the sworn declarations refute that.

13 They also say that there was a fraud on  
14 the Court by stopping research before it happened.  
15 But they were very clear in their declarations,  
16 Ms. Dai and Ms. Zobel both say they did not have  
17 final say over which research occurred or -- and  
18 that the research decisions were ultimately in the  
19 hands of the researchers.

20 But in any event, Meta is not obligated to  
21 conduct specific research studies. That can't be  
22 a fraud.

23 And the State also makes a remarkable  
24 argument in the reply that there has been a  
25 failure to produce discoverable material under the

1 false guise of attorney/client privilege. The  
2 State has no factual basis for that. It's a wild  
3 accusation to make in a paper without any  
4 supporting evidence. And it doesn't rise, in any  
5 event, if arguments over particular designations  
6 or particular documents doesn't establish  
7 application of the crime/fraud exception.

8 The State also suggests in its briefs,  
9 that these cases -- this case is like the tobacco  
10 litigation. It's completely different. In the  
11 tobacco litigation, the industry had created a  
12 counsel for tobacco research, which they stated to  
13 the public was a scientifically independent  
14 organization that would be used to disseminate the  
15 truth about smoking and health. And the Court  
16 found, and I'm quoting from the State v. American  
17 Tobacco case, the Court found defendants used the  
18 counsel for tobacco research to mislead, confuse,  
19 and defraud the public. They used the counsel for  
20 tobacco research, quote, an entity they had  
21 represented to the public as scientifically honest  
22 and independent, to coordinate partisan research  
23 efforts and to promote their public relations  
24 positions.

25 In other words, in the tobacco cases,

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1 there was affirmative fraud, affirmative fraud.

2 The State has no evidence of this at all  
3 in this case. And to the contrary, these  
4 declarations, sworn declarations from the two  
5 lawyers, establish that they were providing  
6 conventional advice on how to comply with  
7 regulations governing the retention of data and  
8 research and how to conduct research in a way to  
9 mitigate risks for the company.

10 This is conventional work by in-house  
11 lawyers. And the suggestion that the State can  
12 somehow turn that into a crime or a fraud goes  
13 vastly beyond anything in the case law. And  
14 certainly vastly beyond what has been recognized  
15 under New Mexico law as a basis for piercing the  
16 attorney/client privilege.

17 So I will stop there, unless the Court has  
18 a question for me.

19 THE COURT: I do not. And after four  
20 weeks of jury trials in tobacco litigation, I  
21 recognize the accuracy of your history there.

22 And while I was focusing so much on public  
23 versus confidential and the like, I believe that I  
24 managed to, you know, flip in some respects the  
25 presentation on plaintiff's motion here.

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1           So I just want to let you know,  
2       Ms. Forster, that I'm not planning on giving  
3       Mr. Hester the reply. You may proceed when you're  
4       ready, and I apologize for that. No disrespect  
5       intended.

6           MS. FORSTER: Understood. And no worries,  
7       Your Honor.

8           And it's my first time appearing before  
9       you, so I will just say it's nice to meet you and  
10      it's a privilege to be here.

11          THE COURT: Okay. Well, I believe I  
12      actually don't screw things up every time. So I'm  
13      sorry I did that on your first time here.

14          MS. FORSTER: All good.

15          THE COURT: Whenever you're ready.

16          MS. FORSTER: I want to start by  
17      acknowledging the nature of the relief that the  
18      State seeks in this motion.

19                We understand that it is unusual to ask  
20      the Court to order Meta to produce for deposition  
21      its own in-house counsel. We understand that is  
22      an unusual request. And we think that it is  
23      warranted here based on the unusual facts that are  
24      beginning to come to light about how Meta used its  
25      in-house counsel and its attorney/client privilege

1 designations to hide, to conceal, and to in some  
2 cases, delete research regarding the harms of its  
3 products to children.

4 We understand that is a big claim, as  
5 Mr. Hester said. But we are not alone in thinking  
6 that it's true. In parallel litigation in DC, in  
7 Tennessee, and in the California JCCP proceedings,  
8 all of the plaintiffs in those cases have moved to  
9 compel production of documents showing Meta  
10 in-house counsel's involvement in research, and  
11 they've all moved to compel production of those  
12 documents on the basis that the crime/fraud  
13 exception applies.

14 So we are not alone in thinking that the  
15 actions that Meta's in-house counsel took that  
16 were exposed by whistleblowers before Congress and  
17 in the documents that those whistleblowers  
18 produced, we are not alone in thinking that that  
19 conduct rises to the level of crime/fraud  
20 exception, and of the crime/fraud, un-vitiates the  
21 attorney/client privilege.

22 Now, I want to zoom out a little bit. The  
23 reason that this is coming to you now, the reason  
24 that DC and Tennessee and California are moving on  
25 the same issues now is because of that

1 Congressional whistleblower testimony.

2 To be candid, Your Honor, we don't know  
3 what we don't know. And we don't know what is  
4 being hidden from us until sometimes a  
5 whistleblower goes before Congress and explains  
6 exactly what is being hidden and how it's being  
7 hidden. So that is why we have something that is  
8 complained about.

9 That is why we have Dr. Sattizahn who  
10 worked primarily in the virtual reality products.  
11 That is why we're requesting depositions of  
12 Ms. Zobel and Ms. Dai who also worked primarily in  
13 reality labs. It's because the information is  
14 available to us. What Dr. Sattizahn has  
15 explained, that the way Meta works, is that all of  
16 the products, all the culture within the company  
17 and the procedures all kind of mesh together and  
18 that's why we think that this is fair game here.

19 Now, I want to talk a little bit about the  
20 information, now that the briefing is complete,  
21 the information that we think is clearly  
22 non-privileged, clearly primarily business advice,  
23 or at least not primarily legal advice, such that  
24 it would be entitled to attorney/client privilege  
25 protection.



1 And I want to rely primarily, as I'm  
2 discussing this with Your Honor, on the  
3 deposition -- excuse me, the declarations of  
4 Ms. Dai and Ms. Zobel that were appended to Meta's  
5 opposition. And I'm going to start with something  
6 Mr. Hester talked about, which is the presentation  
7 that Ms. Dai gave. The title of that presentation  
8 was Best Practices for Sensitive Research and AC  
9 Privilege, attorney/client privilege.

10 And Ms. Dai's declaration states that she  
11 did present a -- present a presentation with that  
12 title to researchers.

13 We think the case law is clear in  
14 New Mexico that that presentation of policies is  
15 not privileged. Now, Mr. Hester said that the  
16 cases we rely on said only that -- or applied only  
17 to business policies with input from lawyers.  
18 Well, that is not quite right. The case at issue  
19 here is Basker (phonetic). And Basker  
20 specifically said that policies implemented based  
21 on legal advice are not protected by  
22 attorney/client privilege because their  
23 implementation and dissemination would destroy the  
24 confidential nature of the communications and  
25 render them primarily business related, not legal.

1 Well, here Ms. Dai told us in the  
2 declaration that she disseminated these policies,  
3 these, quote, best practices, end quote, to  
4 researchers about attorney/client privilege. So  
5 we think that is fair game for a deposition.

6 Now, I want to note that what we believe  
7 to be that presentation was produced by a  
8 whistleblower to Congress, and Congress has made  
9 that document public. It's Charlie 37, as denoted  
10 in Congress's documents.

11 And what that document says -- it has  
12 Ms. Dai's name on it. And what it says is that  
13 research is, quote, sensitive if it has, quote,  
14 comms, policy or legal risks, end quote. Comms,  
15 policy or legal.

16 Now, when we look at that light of Bandari  
17 (phonetic), the New Mexico Court of Appeals case,  
18 what Bandari says is when there is an issue that  
19 in-house counsel addresses that has both legal and  
20 business-related advice involved, only if legal  
21 wins out, only if legal predominates is the  
22 document privileged. If business predominates or  
23 if there is a mix and it's just not clear that  
24 legal predominates, then the document is  
25 unprivileged.

1           So we think that the fact that that  
2       presentation specifically applies to sensitive  
3       research and that sensitive research is defined as  
4       comms, policy, or legal risks, research that  
5       implicates those risks, we think that presentation  
6       is clearly non-privileged.

7           That presentation goes on to label all  
8       sensitive research as attorney/client privileged.  
9       That is a big problem. Because if sensitive  
10      research is research with comms, policy, or legal  
11      risks, not just legal risks, then we have  
12      potential issues of mis-designation,  
13      over-designation of attorney/client privilege, and  
14      we think we are entitled to ask Ms. Dai about when  
15      that policy was enacted, when it was disseminated  
16      and implemented at Meta, who directed it, and what  
17      other information that policy might have resulted  
18      in not being produced to the State as a result of  
19      things being improperly designated as privileged.

20           So that presentation and the circumstances  
21      surrounding it, for those reasons, we think  
22      clearly are predominantly business advice and are  
23      fair game in a deposition.

24           There is a couple more that pertain to  
25      Ms. Zobel. There is whistleblower testimony that

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1 Ms. Zobel gave instructions regarding how far  
2 research could go inside Meta internally, and in  
3 particular research regarding teenage age  
4 misrepresentation.

5 Ms. Zobel does not deny this in her  
6 declaration. She doesn't address it. And Meta's  
7 only response in their opposition is that the  
8 State can't connect advice on how far research  
9 goes inside Meta to the crime/fraud exception.

10 But before we get to the crime/fraud  
11 exception, they have to show that attorney/client  
12 privilege applies. And in order to do that, they  
13 have to show that it's legal, not business advice.  
14 And Meta has offered no basis to conclude that how  
15 far research goes internally inside Meta is  
16 predominantly legal rather than that comms or  
17 policy advice that Ms. Dai talked about in that  
18 presentation to researchers.

19 So we think that is fair game as well.

20 And then the third category is we had  
21 whistleblower statements that Ms. Zobel instructed  
22 a whistleblower that certain research, certain  
23 sensitive researched to be conducted by a third  
24 party vendor.

25 Ms. Zobel's response to this in her

1 declaration is a little confusing. She says, I do  
2 not advise researchers to use a vendor based on  
3 the sensitivity of the research, but based on  
4 whether the research is unbranded, i.e., not  
5 identified with Meta, and based on how far  
6 personal information is intended to be gathered.

7 Well, the first thing I will note is that  
8 is a bit circular. Ms. Zobel is saying, I only  
9 advise researchers to use a vendor when we want  
10 the research to come from a third party unbranded  
11 vendor. And then second, I will note that those  
12 considerations that Ms. Zobel said she advises  
13 researchers on about when to go through a third  
14 party for research, those sound like business  
15 matters, not legal. And Meta has not explained  
16 how whether Meta wants research to be unbranded  
17 and how much personal information is going to be  
18 gathered, how those could be predominantly legal  
19 rather than -- rather than business advice.

20 So those are all examples of material that  
21 Ms. Dai and Ms. Zobel, that their declarations  
22 make clear, and we should get to ask them about in  
23 depositions.

24 And that is before we even get to the  
25 crime/fraud exception, Your Honor. All of that

1 could be asked about without a finding from you on  
2 the application of the crime/fraud exception.

3 Now, on crime/fraud, we -- honestly, most  
4 of this is in our briefs, Your Honor, which I know  
5 you've read. But -- and it's good to hear that  
6 Your Honor has personal experience with the  
7 tobacco cases. But I find it hard to find  
8 daylight between the tobacco cases and what  
9 happened here. Because really what we're talking  
10 about is whistleblower testimony supported by  
11 documents showing that attorney/client privilege  
12 and that in-house counsel were employed to conceal  
13 research, to misrepresent research, and that is  
14 exactly what happened in tobacco.

15 And particularly as the tobacco cases rely  
16 on with respect to the crime/fraud exception,  
17 particularly where the issue is the hiding of  
18 public health and safety risks, we think the  
19 crime/fraud exception is particularly apt. And  
20 that is exactly what we have here.

21 Now, if Your Honor is hesitant about  
22 application of the crime/fraud exception, which we  
23 would understand, we would at least ask Your Honor  
24 for something like the following arrangement:  
25 That you allow us to select maybe 20 documents

1 from Meta's privilege log that Ms. Zobel and Ms.  
2 Dai are on that talk about research and have Your  
3 Honor review those documents in camera and decide  
4 if that can better inform your opinion about  
5 whether the crime/fraud exception applies.

6 And in any event, we think that the  
7 deposition should go forward on the clearly  
8 non-privileged business advice issues.

9 Let me take one moment just to look over  
10 my notes about things Mr. Hester said.

11 You know, he mentioned that it is not true  
12 that what the State asserted in its reply, that  
13 Ms. Zobel and Ms. Dai -- and particularly  
14 Ms. Zobel inserted false statements in the  
15 research. That is a claim from whistleblower Beta  
16 that was laid out in the exhibits to the State's  
17 motion that, in fact, Ms. Zobel inserted  
18 statements such as, this isn't based on research  
19 on Meta's actual VR products, when, in fact, the  
20 research was based on exactly that.

21 Mr. Hester also says that the State's  
22 claim has no evidence, the State's claim that  
23 legal was actually calling the shots, actually had  
24 the final say about research. And I would direct  
25 Your Honor to -- I'm not going to mention it on

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1 the public line, but I would direct Your Honor to  
2 the redacted information in our reply at pages  
3 four, five, and nine, that demonstrate that very  
4 clearly legal was calling the shots there.

5 And I think I will leave it there unless  
6 Your Honor has questions for me.

7 THE COURT: Let's see. If you will just  
8 give me one moment, I'm going to go off camera  
9 because I've got my (unintelligible) sticky notes  
10 attached to various things and I want to make sure  
11 I've heard the information I need.

12 So if you will just give me one moment, I  
13 will be back on in just a moment.

14 (Brief pause in audio.)

15 THE COURT: All right. Thank you for your  
16 patience while I fumbled through my documents over  
17 here.

18 Again, the Court takes note of the broad  
19 New Mexico discovery standards. But even applying  
20 those, based on the filings and argument and the  
21 declarations of Ms. Zobel and Ms. Dai, the Court  
22 finds that their deposition, as attorneys that  
23 provided legal advice to these various research  
24 entities, is inappropriate as it would be allowing  
25 them to be deposed on protected attorney/client



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1 privileged advice and information. So with that,  
2 the motion to compel is denied.

3 I guess last, we've got what is labeled  
4 the dispute about Sattizahn which I -- and by the  
5 way, I will state my general understanding and you  
6 all can correct me if it's wildly off base or even  
7 a little bit off base. And that is that  
8 Mr. Sattizahn has made public statements about  
9 things that the defendants contend are privileged  
10 and so are not wanting the plaintiffs to be able  
11 to ask about those statements at his deposition.

12 Is that largely right or am I way off?

13 And with this, I will first hear from  
14 plaintiffs.

15 MS. SINGER: Good morning, Your Honor,  
16 Linda Singer for the State of New Mexico.

17 Thank you for the opportunity.

18 I do think that that is an accurate  
19 statement. And perhaps also summarizes part of  
20 the problem from the State's perspective, is that  
21 we don't know what statements and documents Meta  
22 has objected to, which we think is fatal to them  
23 carrying the burden on this.

24 And with that, I'm happy to start on our  
25 argument.

1 THE COURT: Certainly.

2 MS. SINGER: Okay. So at the core of the  
3 State's amended complaint in this case, is that  
4 Meta failed to ensure that its products were safe  
5 and that Meta knowingly failed to disclose to  
6 New Mexico consumers information that it had in  
7 its possession showing that its products are not  
8 safe for teens.

9 Dr. Sattizahn has information that shows  
10 that Meta not only knew, for example, that its age  
11 verification and parental controls weren't  
12 effective in keeping kids safe, but that its  
13 attorneys directed researchers to avoid asking  
14 questions about what it called, quote, sensitive  
15 topics; that the attorneys edited their research  
16 and directed them to delete data that demonstrated  
17 harm to children and teens.

18 That is evidence that Meta engaged in the  
19 very fraud that the State has alleged and used  
20 lawyers to help keep this evidence from coming to  
21 light. And we think that Meta's arguments with  
22 regard to privilege in this deposition must fail  
23 for four reasons: First, Meta has never  
24 identified the specific information that it  
25 asserts is privileged, except as information Meta

1 will assert at the deposition is privileged. That  
2 does not respond to the direction Your Honor gave  
3 us at the last hearing that we work out these  
4 issues in advance of the deposition. And it  
5 doesn't carry Meta's initial burden to show that  
6 it has a valid claim of privilege over the  
7 subjects of Dr. Sattizahn's testimony or to show  
8 what the boundaries of that privilege are.

9 And I would direct Your Honor to Santa Fe  
10 Pacific Gold Corporation, New Mexico Court of  
11 Appeals, 2007, which holds that the company had  
12 the burden to show that the privilege applied to  
13 each of the documents at issue.

14 And I would note that it wouldn't have  
15 been hard for Meta to lay out its specific  
16 privilege objections here.

17 Meta has Dr. Sattizahn's detailed  
18 declarations which amount to about 60 pages  
19 collectively. Meta has all of the documents that  
20 the whistleblowers have produced, roughly 59 --  
21 I'm sorry, exactly 59 by Dr. Sattizahn and roughly  
22 the same number from other whistleblowers. The  
23 State asked Meta to identify the specific  
24 information it claims is privileged, but Meta has  
25 not provided it.

1 And as a result, the Court is being asked  
2 to make a broad prophylactic order untethered to  
3 any specific statement or document, and that the  
4 State prepare for and take a deposition without  
5 knowing what is in bounds and out. That is  
6 inconsistent with New Mexico law that requires  
7 Meta to establish the privilege it asserts and  
8 prejudices the State's ability to take the  
9 deposition that Your Honor has ordered.

10 Going forward, as Meta requests, on a  
11 practical level, that at Dr. Sattizahn's  
12 deposition, Meta can direct the witness not to  
13 answer whenever it asserts a privilege claim  
14 almost certainly means that we're going to be back  
15 in front of this court arguing about whether the  
16 objections were proper, which again, seems to be  
17 exactly what you asked us to avoid.

18 Further, the fact that Dr. Sattizahn's  
19 declarations and testimony before Congress and all  
20 of the whistleblower documents are already known  
21 to the State and publicly further undermines the  
22 basis or need for a blanket gag order. To the  
23 extent there is or was a valid claim of privilege,  
24 the information that Dr. Sattizahn has is already  
25 known.

1           And so we would suggest that the  
2       deposition can proceed, subject to the protective  
3       order in this matter, and the Court can evaluate  
4       Dr. Sattizahn's actual testimony of the context  
5       and substance of the issues determined whether the  
6       information is actually privileged, and strike or  
7       exclude any information Your Honor determines is  
8       privileged based on a full record.

9           To avoid any prejudice, the Court can  
10       direct that Meta's participation in the deposition  
11       does not constitute any further waiver of any  
12       claims of privilege.

13           So that is the first argument.

14           Your Honor, I will be briefer, I hope, in  
15       the remaining.

16           The second reason we believe that Meta's  
17       arguments fail is that Meta has failed to show  
18       that the primary purpose of the communications at  
19       issue were legal rather than business. I know  
20       that this is an argument that Ms. Forster made a  
21       few minutes ago and I won't dwell on it. And that  
22       the communications constitute legal advice.

23           While it is challenging to respond to the  
24       assertion of privilege in the abstract, if we  
25       assume Meta will object to any communication it

1 mentions or involves lawyers, much of that  
2 information is factual. And as this court knows,  
3 attorney/client privilege doesn't protect facts.

4 So the facts that lawyers had to  
5 approach -- sorry, approve research, which is what  
6 the Washington court considered in State versus  
7 American Tobacco, that any research on harm was  
8 considered sensitive and was to not be  
9 affirmatively investigated or were able to edit  
10 research before it was shared, or just that acts,  
11 they are not legal opinions.

12 And I would point the Court to Johnson  
13 versus Hewlett-Packard, 2010 Westlaw, 41 --  
14 4510345, which we cite in the briefing, which  
15 indicates the testimony related, for instance, to  
16 the process flow for proposing and reporting  
17 safety research. Including the fact that  
18 attorneys were involved in that process is not  
19 privileged.

20 And as a last point in this second  
21 argument, Meta has not shown that lawyers  
22 involvement in research served a legal rather than  
23 a business purpose, as Bandari required. Mark  
24 Zuckerberg and Adam Mosseri testified publicly  
25 that Meta conducts research to improve its

1 products. That is a business goal, not a legal  
2 one. And evidence that Meta failed to do so is  
3 key to the State's case.

4 So then the third argument, the  
5 information that Dr. Sattizahn, not a lawyer, has  
6 laid out in his declarations and as demonstrated  
7 by documents disclosed by he and the other  
8 whistleblowers fall within the crime/fraud  
9 exception, which is expressly recognized in recall  
10 11-503(d) New Mexico annotated rules.

11 The case, in large part, as Your Honor  
12 knows well at this point, rest on allegations that  
13 Meta engaged in unfair, deceptive, and  
14 unconscionable practices by failing to disclose  
15 information to the public. The information from  
16 Dr. Sattizahn is evidence that Meta did just that,  
17 using attorney/client privilege as one of the  
18 tools to present disclosure.

19 And I want to take a moment to focus on  
20 one of the documents. That is the document right  
21 before the one Ms. Forster mentioned, Charlie 36,  
22 which is one of the publicly disclosed documents.  
23 It's titled Reality Labs UXR, which is integrity  
24 research, Guidance for Researchers on Sensitive  
25 and Attorney/Client Privileged Research. And it

1 indicates, quote, sometimes research involving  
2 sensitive categories requires extra care and  
3 mitigations, which may include the legal POC, or  
4 point of contact, making a determination about  
5 whether a study should be conducted under  
6 attorney/client privilege; whether other legal  
7 integrity and/or outside counsel may need to  
8 review and approve the research; and/or whether  
9 the submission details documents should be limited  
10 in any way.

11 And the document goes on, all on tobacco,  
12 Your Honor, to lay out a plan for shielding that  
13 research as attorney/client privilege. I won't go  
14 through all of it, but it says that Meta will  
15 engage outside counsel, will jointly instruct the  
16 researcher on the methodology and the study  
17 details, the vendor will conduct the study, and I  
18 will quote here, and deliver the findings to  
19 outside counsel, and Meta legal point of contact.  
20 Outside counsel renders legal advice to Meta based  
21 on study results. Most product safety, in parens,  
22 health and safety integrity studies are conducted  
23 under a CP, certify and privilege, working under  
24 the direction of outside counsel.

25 There is an internal Meta document I won't



1 go into, given that we are on the public line, but  
2 it describes the sensitive topics or populations.  
3 Again, I won't detail them.

4 Although I do think that they are  
5 important because they track the allegations of  
6 the State's complaint, and involves lawyers in  
7 overseeing just that research.

8 And it is, again, to use Ms. Forster's  
9 phrase, there is no daylight between what this  
10 represents and what happened with the center for  
11 tobacco research, and deliberately sheltering  
12 information as attorney/client privilege to keep  
13 it from being known in litigation.

14 According to whistleblower documents, Meta  
15 even had formal internal guidance dated March 2023  
16 for researchers conducting sensitive  
17 attorney/client privileged research.

18 And this is -- I'm sorry, I will skip over  
19 that factual matter because it's confidential,  
20 Your Honor.

21 But again, I want to make the point that  
22 this is not sui generis. And I think the Court  
23 can be guided by the tobacco litigation. In our  
24 briefing, we cite State versus Philip Morris and  
25 State versus American Tobacco. Both cases in

1 which courts found that the company's failure to  
2 conduct appropriate research into the safety of  
3 its products and the failure to warn their  
4 products consumers, if the research supported  
5 negative conclusions, fall within the crime/fraud  
6 exception.

7 I would note that the State first issued  
8 CIDs, a CID to Meta in 2023, the conduct that we  
9 describe in the briefing and that Dr. Sattizahn,  
10 more importantly, describes in his testimony in  
11 declarations, relate to evidence that was  
12 sheltered or altered after the State issued its  
13 CID.

14 And as we lay that in a brief, and again,  
15 we don't make this allegation lightly, and we make  
16 it based on evidence now publicly available, and  
17 produced in this litigation, that that conduct is  
18 a fraud on the Court. And it undermines the  
19 truth-seeking role of litigation and the  
20 administration of justice.

21 It doesn't serve the purpose of  
22 attorney/client privilege to ensure that lawyers  
23 can freely provide guidance to clients, but  
24 misuses the attorney/client privilege to allow  
25 lawyers to hide information for their clients.

1 And that takes me to the fourth and final  
2 point. I don't want to spend a lot of time on  
3 this because I think Your Honor need not reach it.

4 But the State has laid out that Meta has  
5 waived any claim of privilege that may exist. And  
6 I do want to address Meta's argument, because I  
7 think it misses the State's actual position.

8 We don't contend that Dr. Sattizahn waived  
9 Meta's privilege. We contend that Meta waived  
10 Meta's privilege when, even after documents were  
11 disclosed in this litigation and filed on the  
12 docket, Meta made no effort to assert a privilege  
13 or call them back.

14 Now, Meta said in its brief that it raised  
15 its privilege argument as soon as the State sought  
16 to depose Dr. Sattizahn.

17 But the State produced the relevant  
18 documents in this litigation in September and then  
19 again in early October, making them available in  
20 this case, whether or not Dr. Sattizahn was ever  
21 deposed.

22 And Meta has clawed back dozens of  
23 documents in this litigation. It knows how to  
24 preserve its privilege. And it failed to do so  
25 here.

1           And this is akin to US versus De La Jara,  
2           a Ninth Circuit case which we cite. But held that  
3           even when the initial disclosure was involuntary,  
4           as here, privilege is preserved only if, quote,  
5           the privilege holder has made efforts reasonably  
6           designed to protect and preserve the privilege.

7           And the Ninth Circuit said it would deem  
8           privilege waived if the privilege holder fails to  
9           pursue all reasonable means of preserving the  
10          confidentiality of the privileged matter.

11          And in De La Jara, the privilege holder  
12          did nothing to recover the letter or protect its  
13          confidentiality over six months. And that had the  
14          privilege holder attempted to recover the letter,  
15          appellant could have minimized the damage. But in  
16          failing to do so, it irretrievably breached  
17          privilege and waived it.

18          For all of those reasons, we believe that  
19          Dr. Sattizahn should be permitted to testify on  
20          the documents (unintelligible) and contained in  
21          his declaration and in the whistleblower  
22          disclosures and that Meta should not be allowed  
23          free rein without ever having identified the  
24          specific information about which it asserts  
25          privilege to limit Dr. Sattizahn's testimony.

1           And with that very long argument, I will  
2       yield to any questions the Court may have for the  
3       State.

4           THE COURT: All right. At this point, I  
5       don't have any for you.

6           Mr. Schultz, are you arguing?

7           MR. SCHULTZ: Yes, Your Honor. Thank you.

8           THE COURT: All right. Whenever you're  
9       ready.

10          MR. SCHULTZ: Sure.

11          So Dr. Sattizahn is a disgruntled former  
12       Meta employee who, when he was terminated, stole  
13       privileged documents from Meta, published them  
14       online, and then testified before Congress about  
15       legal advice he purportedly received from Meta's  
16       attorneys.

17          The Court has already ruled a moment ago  
18       that those communications with Meta's attorneys  
19       are privileged. And disclosing those materials,  
20       Mr. Sattizahn -- or Dr. Sattizahn, excuse me,  
21       flagrantly violated Meta's privilege.

22          The State now seeks to compound the harm  
23       to Meta and induce Sattizahn to commit further  
24       violations of Meta's privilege by eliciting his  
25       deposition testimony about those privileged

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1 matters.

2 It's not appropriate for the State to  
3 knowingly induce a witness to violate his former  
4 employer's privilege. In fact, doing so, would  
5 directly violate New Mexico Rule of Professional  
6 Conduct 404(a), which says that a lawyer shall not  
7 use methods of obtaining evidence that violate  
8 rights of a third party, here Meta, and ABA formal  
9 opinion 91-359 expressly addresses this specific  
10 situation and says that when an attorney is  
11 contacting a former corporate employee, the  
12 attorney must be careful not to seek to induce the  
13 former employer to violate the privilege attaching  
14 to attorney/client communications.

15 And that is exactly what the State seeks  
16 to do here.

17 And so we're asking for remedy that is  
18 fairly modest and we believe reasonable, which is  
19 a protective order preventing the State from  
20 asking Mr. Sattizahn about privileged legal advice  
21 he received as a Meta employee, precluding  
22 Dr. Sattizahn from disclosing privileged legal  
23 advice, and obligating Mr. Sattizahn to adhere to  
24 instructions during his deposition from Meta's  
25 counsel not to answer questions on grounds of

1 attorney/client privilege.

2 And I want to briefly just explain why we  
3 think these procedures are necessary in this case.

4 In a normal deposition, I think it would  
5 be sufficient to say, okay, there is some  
6 privileged matters that they go into on the other  
7 side, but we can have our attorneys instruct the  
8 witness not to answer the question. And if this  
9 were a deposition of, say, Ms. Zobel and Ms. Dai,  
10 those would be appropriate safeguards. But there  
11 are no safeguards in this deposition because we  
12 can't expect Dr. Sattizahn to adhere or follow the  
13 instructions of Meta's counsel not to disclose  
14 privileged information, which (unintelligible) a  
15 protective order obligating Dr. Sattizahn to  
16 follow those instructions, and precluding the  
17 State from going into areas that it knows or  
18 should know are privileged.

19 Now, in the State's brief on this issue,  
20 it raised three arguments. The first two I think  
21 have been disposed of by the Court already. Those  
22 are business communications and crime/fraud.  
23 Those are the same arguments that the State raised  
24 with respect to Ms. Zobel's and Ms. Dai's  
25 deposition.

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1 The third argument is new.

2 THE COURT: Well, Mr. Schultz, just to  
3 make sure you're clear, from my perspective, there  
4 is a distinction between seeking to depose Meta  
5 counsel about legal advice that, you know, in  
6 particular, according to their affidavits and  
7 statements, they gave to these business entities.  
8 And there is a distinction between that  
9 potentially and someone who received advice and  
10 will be testifying about in that witness's  
11 non-counsel opinion how it affected or what it was  
12 and how it affected his activities with the  
13 company.

14 So I just want to let you know, so I'm not  
15 being strangely opaque up here, I do see that as a  
16 difference. And so it is not necessarily true  
17 that everything I just ruled on, finding a  
18 balance, tipping in favor of attorney/client  
19 privilege being protected would be true with  
20 respect to Dr. Sattizahn.

21 MR. SCHULTZ: I agree, Your Honor.

22 It is different in the sense that  
23 Dr. Sattizahn is not an attorney and not  
24 everything he did as a Meta employee is  
25 privileged. And that is not our position. We're



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1 not opposing a deposition of Dr. Sattizahn, full  
2 stop.

3 THE COURT: Sure.

4 MR. SCHULTZ: But we're simply seeking  
5 safeguards to protect the very information, the  
6 attorney/client communications that Dr. Sattizahn  
7 received from counsel, like Ms. Zobel and Ms. Dai.

8 And on that issue, there is no  
9 distinction. If Ms. Zobel or Ms. Dai gives  
10 Dr. Sattizahn legal advice, that legal advice is  
11 privileged as to the attorneys and is privileged  
12 as to Dr. Sattizahn. It doesn't matter legally if  
13 he received it or gave it.

14 The privilege still applies.

15 And the other distinction here, Your  
16 Honor, is that Dr. Sattizahn has already shown a  
17 willingness to disregard all privilege recalls out  
18 there and disclose information that is privileged,  
19 which is why we need appropriate safeguards at his  
20 deposition that we're requesting.

21 And so again, we're not opposing the  
22 deposition of Dr. Sattizahn. We're simply asking  
23 for the Court to implement safeguards and place  
24 appropriate limits to protect information that is  
25 privileged because it came from Meta's legal

1 counsel.

2 Now, the State's argument that they focus  
3 on in their brief on this is waiver. And that is  
4 an argument they raise on Dr. Sattizahn. It's the  
5 only one they don't raise with respect to Zobel  
6 and Dai, but they do raise on Sattizahn, so I want  
7 to focus on that.

8 And we think there has been no waiver  
9 here. There are two New Mexico rules on point,  
10 directly on point, neither of which the State  
11 squarely addresses.

12 The first is New Mexico Rule of Evidence  
13 11-511, which sets forth the relevant standard for  
14 waiver.

15 And that rule says, a person who possesses  
16 a privilege against disclosure of a confidential  
17 matter waives the privilege if the person  
18 voluntarily discloses or consents to disclosure of  
19 any significant part of the matter or  
20 communication.

21 Now, clinically, that rule differs from  
22 federal law and federal common law and state  
23 common law. It is a specific statutory based rule  
24 on waiver that was implemented by the New Mexico  
25 Supreme Court.

1 And there is no evidence whatsoever that  
2 Meta either voluntarily disclosed the privileged  
3 material at issue here or consented to  
4 Dr. Sattizahn disclosure of those materials, full  
5 stop.

6 The State does not contend otherwise.

7 The State instead asserts that Meta waived  
8 privilege over the improperly disclosed documents  
9 by failing to claw them back after Dr. Sattizahn  
10 published them online.

11 That argument, I think, finds no support  
12 in either common sense or New Mexico law.  
13 Starting with common sense, Meta cannot legally  
14 compel a disgruntled former employee to unpublish  
15 privileged documents by issuing him a claw back  
16 notice. And the State doesn't explain what  
17 purpose serving such notice in this context  
18 serves.

19 And under New Mexico law, there is no case  
20 that we are aware of, and the State cites, holding  
21 that failing to claw back a privileged document  
22 published by a third party constitutes either a  
23 voluntarily disclosing that privileged material or  
24 consenting to disclosure of privileged material  
25 under New Mexico Rule 11-511.

1 And to the contrary, courts applying that  
2 rule have generally required offensive or direct  
3 use of privileged materials before a party will be  
4 deemed to have waived its attorney/client  
5 privilege. That comes from the Lyons (phonetic)  
6 case from 2000 Court of Appeals.

7 Now, the second New Mexico rule directly  
8 on point here, which is New Mexico Rule 11-512,  
9 which again the State does not address at all, and  
10 that rule says a disclosure of a privileged matter  
11 is not admissible against the holder of a  
12 privilege when the disclosure was made without the  
13 opportunity to claim the privilege. This rule is  
14 on top of the general waiver rule in 511 and is  
15 directly on point here. We did not have an  
16 opportunity to claim privilege when Dr. Sattizahn  
17 published these privileged documents online.

18 And that material, therefore, under  
19 Rule 512, is not admissible against Meta.

20 Now, I imagine the State does not address  
21 the elements of 511 or 512. It instead relies  
22 primarily on a 1988-case called Hartman (phonetic)  
23 which applied a different common law waiver  
24 standard in assessing disclosure of privileged  
25 material by the privilege holder.

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1 That case is not relevant here for at  
2 least three reasons: One, again it applies a  
3 common law waiver standard that is not found in  
4 Rule 11-511.

5 And after Hartman, New Mexico Supreme  
6 Court clarified, and this is a direct quote from  
7 Allen v. LeMaster, who clarified that courts must  
8 avoid applying common law principles that are  
9 inconsistent with the language of our rules, being  
10 Rule 11-511, and must not engage in a type of ad  
11 hoc judicial analysis engaged in by other courts  
12 that are (unintelligible) by the common law of  
13 waiver.

14 In other words, New Mexico court should  
15 apply the waiver standard as it's set forth in  
16 Rule 11-511, not a common law test that is kind of  
17 a free ranging reasonable standard that Ms. Singer  
18 quoted a moment ago from the Ninth Circuit. So  
19 that is one reason Hartman doesn't apply here.

20 Second is Hartman addresses disclosure by  
21 the privilege holder. Again, this is an improper  
22 disclosure by a third party, which is addressed by  
23 11-512, which says that it's inadmissible if we  
24 didn't have the chance to object to it.

25 And third, Hartman addressed waiver as to

1 the specific documents disclosed in that case.

2 And that is an important point here, it's a  
3 distinction in this case and Hartman. What the  
4 State is asking for here is not simply a waiver  
5 order as to the documents disclosed by  
6 Dr. Sattizahn. They're asking for an order that  
7 Meta has waived privilege over the subject matter  
8 of those documents, such that the State can  
9 further explore those materials through  
10 Sattizahn's deposition testimony.

11 Essentially it's (unintelligible) not a  
12 waiver (unintelligible) asking for here -- or the  
13 State is asking for here.

14 And that is a very high bar to me. And  
15 the courts I quoted a moment ago, the Lyons case,  
16 for example, generally hold that subject matter of  
17 waiver of the type asked for by the State here  
18 generally requires offensive or direct use by the  
19 privilege holder. There is no evidence of that  
20 here.

21 The last issue I want to address briefly,  
22 Your Honor, is the first part of Ms. Singer's  
23 argument, which is sort of akin to waiver that the  
24 State doesn't know what we're asserting privilege  
25 over here.

1           That is not our understanding of the  
2       conversations that happened (unintelligible) from  
3       the State. We have interpreted the State's  
4       position as a blanket we get to ask whatever we  
5       want to Dr. Sattizahn about anything he made  
6       public, regardless of what the privilege is, of  
7       whether it's privileged. There simply has not  
8       been a discussion about a document per document  
9       privilege claim because the State hasn't taken the  
10      position that some documents may be off limits and  
11      some may be within limits.

12           It hasn't indicated a willingness to have  
13      that conversation about, okay, we'll cabin our  
14      questions to this document, this document. The  
15      State has taken the position that everything is  
16      fair game for Dr. Sattizahn.

17           If the State is willing to have that  
18      conversation, we're happy to have it and tell the  
19      State, okay, these documents are privileged  
20      specifically and go document by document and say,  
21      okay, this is -- research is not legal advice,  
22      this is legal advice, it's off limits.

23           And we can have that conversation before  
24      the deposition.

25           But regardless of that conversation, what

1 we think needs to happen or should happen here is  
2 that there should be an order that prevents  
3 Dr. Sattizahn from breaching Meta's privilege in a  
4 further way by willingly disclosing privileged  
5 material over the objections of Meta's counsel and  
6 precluding the State from knowingly going into  
7 privileged materials in the deposition in  
8 violation of Rule 404.

9 Nothing further. I will pause for  
10 questions.

11 THE COURT: All right. I don't have any  
12 for you at this time.

13 All right. And let me just -- I will just  
14 state at this point, I understood from the notice,  
15 that this was sort of a dispute and then I noted  
16 as well that there was a motion filed by plaintiff  
17 on the 17th, so I'm not clear at this point if I'm  
18 dealing with a dispute where I hear from each side  
19 or if I'm ruling on a motion.

20 But maybe in any event, let me just --  
21 Ms. Singer, I have a question for you. And then  
22 Mr. Schultz, I will ask you to weigh in too, if  
23 necessary.

24 And that is, is there a reasonable  
25 mechanism by which Dr. Sattizahn's -- the



1 deposition transcript and any exhibits that are  
2 alleged to be privileged and the like, could be  
3 protected and confidential until the Court has an  
4 opportunity to review objections made by Meta and  
5 rule on those?

6 MS. SINGER: From the State's perspective,  
7 Your Honor, absolutely. And I think that is one  
8 of the point I perhaps inartfully tried to express  
9 in my argument.

10 THE COURT: No. And you weren't inartful  
11 at all. I guess I just wanted to make sure that I  
12 was stating it in a way that I would be applying  
13 it. And that is, you know -- and as well, I  
14 understood from your argument as well, and I would  
15 agree that Meta's participation in the deposition  
16 is not a waiver of privilege and is not  
17 prejudicing its position with respect to the  
18 claims.

19 But I did want to make sure that it would  
20 be clear both for the Court and plaintiffs that  
21 that would be the sort of protective order I would  
22 be interested in, is making sure that it's  
23 protected until there is an opportunity to rule.

24 MS. SINGER: Absolutely, Your Honor. And  
25 the State is willing to agree to whatever

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1 guardrails on that that provide confidence. But,  
2 yes, that would be our understanding and our  
3 proposal. And I do think it has the additional  
4 virtue of giving the Court a clear record on which  
5 to make those determinations and avoid a second  
6 deposition of Dr. Sattizahn after a witness is  
7 instructed not to answer questions and the Court  
8 is making those determinations without the  
9 information on what his answer would be.

10 THE COURT: Sure. And Mr. Schultz.

11 MR. SCHULTZ: So if I understand correctly  
12 the proposal on the table is essentially the State  
13 can go forward with its deposition of  
14 Dr. Sattizahn, if there are privilege objections,  
15 that Dr. Sattizahn ignores instruction not to  
16 answer, the Court can rule on those after the  
17 deposition, is that right?

18 THE COURT: Correct. That he would be  
19 allowed -- so I guess where I'm going in this, the  
20 State would be allowed to explore, as I think I  
21 previously ruled, questions related to all  
22 publicly disclosed or available documents. I  
23 understand that Meta is contending they shouldn't  
24 be and that they're -- still need to be protected.  
25 But I would allow that deposition to go forward,

1 allowing questioning on all such documents.  
2 Meta's participation in the deposition would not  
3 be a waiver of its claims of privilege with  
4 respect to those documents. And then the  
5 deposition would be essentially sealed or  
6 protected, you know, with similar or same effect,  
7 and it would remain so until the Court can make a  
8 decision based on, I guess, post deposition  
9 assertions by Meta as to what was inappropriate.

10 I mean, part of this is noting, as well, I  
11 think it's 512 that deals with admissibility of  
12 such issues. But I'm still focused on discovery.

13 And so that is another important  
14 distinction for the Court.

15 So again, I want to make sure that what  
16 I'm proposing is something that is, I understand,  
17 objectionable, but workable.

18 MR. SCHULTZ: Yes, and good flight on 512,  
19 it does deal with admissibility.

20 I think I see two -- two issues with that  
21 approach, Your Honor.

22 One is that the deposition is going to be,  
23 you know, coordinated with MDL attorneys and  
24 people in the deposition will not just be  
25 New Mexico and Meta, it will be people outside.

1 And so it's going to be hard to cabin the universe  
2 of people who see this information to just people  
3 in the Court (unintelligible) seeing it.

4 The second, and I think more problematic  
5 issue from our perspective, Your Honor, is it's  
6 going to be hard to cabin the topics that  
7 Dr. Sattizahn testifies about. It would be one  
8 thing if, you know, all that was really  
9 (unintelligible) was the words on the page and all  
10 that Dr. Sattizahn testified about was the words  
11 on the page of documents that were publicly  
12 disclosed.

13 But the nature of a deposition is to  
14 explore witness's testimony beyond the documents.  
15 And so, you know, there is really no telling what  
16 he will say and what additional conversations he  
17 will disclose. And so I think doing it this way,  
18 from our perspective, risks further privilege  
19 violations of not only the materials that were  
20 already in public, but new alleged conversations  
21 that Dr. Sattizahn had that have not previously  
22 been disclosed before, which would obviously  
23 compound the violation there.

24 So, you know, it's going to be hard to  
25 police that line and it's going to be hard to

1 police the line of where does, you know, the  
2 documents he published stop and where does, you  
3 know, referring else begin.

4 THE COURT: Sure. And by the way, I don't  
5 disagree with what you're saying. It's just from  
6 a Court's perspective, the choice is place that  
7 line without knowledge of what is going to be said  
8 in advance of the deposition, or figure out the  
9 line based on what was said after the deposition.  
10 And I am obviously inclined towards the latter.

11 Let me ask, on the MDL piece, because it's  
12 a good point and it's one that maybe I'm helping  
13 facilitate, if not create, and that is -- and  
14 again, counsel, correct me if I'm wrong.

15 I have understood that my rulings with  
16 respect to coordinating depositions in this  
17 matter, with those being taken in the MDL, was to  
18 respect witness time, efficiency, expense, all  
19 those things.

20 And it's been in that vein that I,  
21 wherever possible, have said, coordinate. But I  
22 certainly have -- well, I shouldn't say -- the  
23 other piece of my rulings, I think have been, that  
24 coordination is not at the expense of this  
25 New Mexico litigation in the application of

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1 New Mexico discovery standards.

2 So I guess where I'm going with all this  
3 is if my rulings to try to accomplish the former,  
4 the efficiencies and the respect for time and all  
5 those sorts of things, is creating problems with  
6 respect to applying New Mexico specific rulings,  
7 let me know, because that could be a good reason  
8 to say, all my other concerns are outweighed by  
9 the latter and maybe this needs to be conducted in  
10 a separate forum.

11 I don't know how feasible that is. I  
12 don't know -- again, I sort of feel like I have  
13 steered you all towards or whatever, forced you  
14 all towards, whatever the right term is, towards  
15 coordinating, and now I'm hearing, judge, you're  
16 actually creating problems for New Mexico  
17 litigation by doing that, which has not been my  
18 goal.

19 So let me ask Ms. Singer, as the person  
20 who wants to take said deposition. What are your  
21 thoughts with respect to that.

22 MS. SINGER: Yes, I think two issues. And  
23 it is a turn, Your Honor, given the prior posture  
24 on this.

25 One is, I think Your Honor made clear at

1 the last hearing, this deposition is proceeding as  
2 a New Mexico deposition. And for the witness's  
3 convenience, we are prepared to coordinate, just  
4 as Your Honor has directed in the past, and that  
5 seems fair, we have agreed upon a division of time  
6 that makes this a one-day deposition, among the  
7 plaintiffs and with Meta, all.

8 That said, I think Your Honor could set  
9 either one of two conditions in the interest of  
10 allowing us to go forward. One is that any  
11 parties that participate in the New Mexico section  
12 of this deposition have to agree to abide by the  
13 same sealing requirements, and/or treat the  
14 New Mexico deposition as a separate part of the  
15 deposition.

16 I think either of those address the  
17 concern that has been raised.

18 THE COURT: All right. Mr. Schultz.

19 MR. SCHULTZ: Yeah, I mean, I think at a  
20 minimum, if this procedure was to go forward, we  
21 want to, you know, sequester that part of the  
22 deposition and hold it entirely separately.

23 But, you know, it strikes me as well that,  
24 you know, there might be a better way to do this,  
25 which is, I thought Ms. Singer at the beginning of

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1 this call had a good idea of, you know, talking  
2 through the documents that Dr. Sattizahn published  
3 and clarifying what is and is off limits.

4 And I think if we can do that, we can, you  
5 know, go forward with the deposition of the  
6 non-privileged parts of Dr. Sattizahn's materials  
7 that he's published and just leave it at that.

8 THE COURT: All right.

9 MR. SCHULTZ: But sanctioning a deposition  
10 that will conceitedly have privilege disclosures  
11 in it, I have never seen that done in a case in my  
12 short career. Maybe it has been and I'm not aware  
13 of it. But it strikes me as, say, an  
14 unconventional remedy for (unintelligible) maybe  
15 we can address in advance of the deposition simply  
16 by talking to the State and Meta about, you know,  
17 what is and is not off limits.

18 THE COURT: All right. Well, again, so in  
19 past hearings, I have worked to address this,  
20 admittedly imperfectly, but again, we've talked  
21 about drawing lines and when they're drawn.

22 And I don't agree that, again,  
23 Dr. Sattizahn's testimony about his activities and  
24 how those activities worked and maybe even worked  
25 in conjunction with, you know, some legal input is



1 automatically and always going to be privileged.

2 And so I don't think it's as clear cut as  
3 all that. I would certainly encourage you all to  
4 confer, because if there are documents that I am  
5 clearly going to say, even though publically  
6 available, which was the first line I drew, A,  
7 this is never going to be admissible, clearly this  
8 is going to be protected, well, I would encourage  
9 you all to make your deposition productive and not  
10 spend a bunch of time on that.

11 You know, so conferral, I think, still has  
12 merit and I think still could be useful.

13 But, again, because I don't know, in fact,  
14 that I am ordering a deposition that will  
15 necessarily go into privileged matters, I just  
16 know it's going to go into some matters that are  
17 alleged to be privileged by one side that are  
18 publicly available, I'm going to, again, allow  
19 that to go forward.

20 I will say, the New Mexico specific  
21 deposition that is allowing questions on these  
22 matters should be a separate part of the  
23 deposition, and just be New Mexico counsel and not  
24 the -- all the MDL -- again, by the way, I hear  
25 somebody saying -- if I am told later on that a

1 similar or identical ruling has been made in the  
2 MDL, so now there is really a distinction without  
3 a difference, this ruling would change. But  
4 understanding at the moment that I am making a  
5 decision that is unique to New Mexico and  
6 different from what exists in the MDL, I would say  
7 that the deposition of Dr. Sattizahn for  
8 New Mexico purposes should be a separate and needs  
9 to be a separate proceeding.

10 And by that, I don't mean you need to  
11 change rooms, you need to do anything different, I  
12 mean, other MDL counsel can't be sitting in there  
13 learning all these things that I'm going to rule  
14 on later and then seeing how they can use them in  
15 other litigation.

16 MR. SCHULTZ: Understood, Your Honor.

17 And if we are going to do it this way, I  
18 think, you know, we would request that, you know,  
19 after the deposition, to the extent that there are  
20 things that Dr. Sattizahn said that are privileged  
21 or disclosed privileged advice or materials, yeah,  
22 we would be able to go to the Court and get those,  
23 you know, stricken from the record entirely, as  
24 privileged materials, and then have the State, you  
25 know, basically destroy and then replace this

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1 transcript with a redacted version of the  
2 non-privileged sections of the deposition.

3 THE COURT: Sure. When is this deposition  
4 scheduled?

5 MS. SINGER: December 8th, Your Honor.

6 THE COURT: All right.

7 MR. GRAYSON: Your Honor, may I have one  
8 more thing on this issue? This is James --

9 THE COURT: Just one moment. And that's  
10 only because it's not your input of being  
11 objectionable, but I only have a certain amount of  
12 mental bandwidth sadly.

13 So I guess where I wanted to go with this  
14 is, again, I think consistent with the notion that  
15 there would be an order protecting and essentially  
16 sealing this deposition transcript until this  
17 Court has made any requested rulings related to  
18 confidentiality, assuming that they are  
19 immediately brought to the Court's attention.  
20 Again, I'm not going to say sand bagging will be  
21 rewarded. But if they are immediately brought to  
22 the Court's attention, I think it would make sense  
23 and would be consistent with the ruling that I  
24 rule on those before there is an unsealed version  
25 of the transcript released.

1           So I think that that is -- I don't  
2 understand how else it would work frankly.

3           The other piece that I want you to know  
4 for your timing in terms of when those matters are  
5 being raised and when that briefing is done, I  
6 currently have a jury trial scheduled the 9th to  
7 the 16th. And while I have endeavored to jump on  
8 to hearings in this matter in the midst of the  
9 last jury trial, this might be involved enough, I  
10 suspect, that I would not be able to do that  
11 during the jury trial. I'm guessing.

12           So if you decide that a reasonably  
13 competent judge would be able to do that, then you  
14 can certainly request it.

15           But please be lenient with your  
16 assessment, what you think a reasonably competent  
17 judge could do.

18           With that, I would be looking to set this  
19 matter, if needed, as one of those December issues  
20 we talked about, and I think was requested earlier  
21 on, and not something that is piling up into  
22 January as you're trying to prepare for your  
23 trial.

24           And so I don't know exactly when we would  
25 do that.

1 Part of it would also be to see how many  
2 objections there are and what is involved. But I  
3 just want to let you know that that is precisely  
4 the sort of proceeding that might, I think, need  
5 to be scheduled in December sometime after the  
6 16th when my jury trial is supposed to end.

7 All right. Mr. Grayson.

8 MR. GRAYSON: Thank you, Your Honor.

9 James Grayson for the New Mexico  
10 Department of Justice. And I apologize for  
11 jumping in on this issue.

12 I just feel it necessary to address  
13 Mr. Schultz's reference to Rules of Professional  
14 Conduct, because as Your Honor pointed out, there  
15 are two different issues here, admissibility  
16 versus discovery. But he raised that third issue,  
17 and so I do want to the address that with the  
18 Court.

19 THE COURT: Okay. And by the way, let me  
20 just say, I will just have this -- which is, I am  
21 ruling on the basis that I do not think that the  
22 line is as clean as is being represented between  
23 what is protected and what is not.

24 We're talking about publicly disclosed  
25 documents. I understand a party is saying that

1 they are not happy with and have not waived  
2 protections related to those disclosures. But  
3 again, it is what it is in terms of we've already  
4 limited this to publicly available documents and  
5 information.

6 So -- and the witness can ask questions  
7 related to those.

8 So this Court is not out to steer itself  
9 towards judicial standards. It is not out to  
10 steer counsel towards the disciplinary board. I  
11 am trying to make sure that we thread some needles  
12 here so there is broad discovery consistent with  
13 New Mexico standards and some protections that if  
14 that leads us into areas that would be  
15 inappropriately damaging or properly objectionable  
16 to Meta, they get a chance to make those  
17 objections before this is out in the world.

18 So if you -- if anybody here sends someone  
19 to the disciplinary board for obeying my order, I  
20 reserve the right to, as a judge, make a  
21 countervailing complaint against that complaining  
22 party. But, you know, let's go with people are  
23 following the Court's orders. If anybody is at  
24 fault, it's me, I will take that wrap and we'll  
25 deal with it.

1 But I think that this mechanism is going  
2 to accomplish what I just said, which is full and  
3 fair discovery. And if it turns out that that has  
4 led us into areas that are protected, I can make  
5 decisions on that before it's released to the  
6 world.

7 MR. GRAYSON: Understood, Your Honor. And  
8 the State agrees 100 percent. I wasn't suggesting  
9 in any way that Your Honor was directing us toward  
10 any --

11 THE COURT: Well, that is what I would be  
12 doing. If the concern is, hey, following this  
13 judge's order, now you violate Rules of  
14 Professional Conduct, which is what I sort of  
15 understood as a synopsis was being suggested, I'm  
16 saying, follow my order and I will deal with  
17 anything that comes from it.

18 But it is -- again, I am not trying to  
19 ignore -- well, I am not ignoring the Rules of  
20 Evidence, I'm not ignoring Rules of  
21 Professionalism. I am trying to make sure that we  
22 balance the claims or potential claims of  
23 privilege with the public availability of these  
24 statements and the New Mexico Discovery standards.  
25 And I think hopefully this mechanism will do that.

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1 I will ask that you all obviously confer,  
2 as always, in good faith, and hopefully  
3 productively, but with respect to the mechanisms  
4 we've discussed this morning about this  
5 deposition, and get me an order that I can enter  
6 on that so that it is part of the record prior to  
7 the deposition.

8 MR. GRAYSON: And Your Honor, we're happy  
9 to confer with Meta on this issue. And the reason  
10 I raised the Rules of Professional Conduct point  
11 is just, I hope that this will be a reciprocal  
12 relationship.

13 Because Mr. Schultz raised the issue of  
14 contacting a former Meta employee and asking about  
15 privilege matters, when, in fact, what happened  
16 here is that Meta has deprived the State of the  
17 same opportunity that Meta has today. Meta  
18 contacted a former employee of the New Mexico  
19 Department of Justice -- or that employee rather  
20 contacted Meta, suggested that he would be willing  
21 to provide privileged information if he were  
22 ordered to at deposition. And then requested a  
23 job from Meta in the same communication.

24 And Meta didn't produce that communication  
25 to the State until the Court ordered it to do so.



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1           So I just want to remind Meta of its Rules  
2       of Professional Conduct obligations at the same  
3       time it's trying to do the same for the State.

4           THE COURT: All right. Well, again, it is  
5       true that I've been trying to hopefully  
6       appropriately balance these concerns with respect  
7       to multiple sides. I don't think that Meta yet  
8       has my resume.

9           So I don't think that I'm unreasonably  
10      biased in that effort.

11          And I think that where we're at is, yes,  
12      the rules apply to everybody. The Code of  
13      Judicial Conduct applies to me.

14          And we will all behave accordingly. And  
15      we will deal with any issues as they come up.

16          But again, right now what I'm focused on  
17      is the Court's ruling. Get me an order so that I  
18      can see that everyone is on the same page with  
19      respect to the mechanics; they're going to allow  
20      this matter to go forward or the deposition in  
21      this case; that I'm not prohibiting the State or  
22      limiting what they can ask about with respect to  
23      these publicly available statements or documents,  
24      and then we will circle back because that  
25      transcript will be protected and see if there are

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1 any valid privilege assertions so that -- and that  
2 will be done before the transcript is unsealed.

3 MR. GRAYSON: Thank you, Your Honor.

4 THE COURT: All right. Anything else for  
5 this morning?

6 MR. HUFF: Your Honor, as I previewed at  
7 the start, I have --

8 THE COURT: Oh, yes, Mr. Huff.

9 MR. HUFF: I have a very brief request.  
10 And I'm not going to belabor and get into  
11 the substance of it; just to explain the issue.

12 Which is: We would like to ask for an  
13 expedited briefing schedule for a matter that we  
14 think requires semi-urgent resolution, which is  
15 that on November 14th, the State amended its  
16 interrogatory responses to add 63 new alleged  
17 false statements to this case, and an entirely  
18 brand new theory relating to guns and drugs on the  
19 platform of Meta.

20 And of course, these theories were all  
21 disclosed after the deadline for experts and after  
22 the deadline for summary judgment. So we filed  
23 summary judgment motions attacking the statements  
24 that the State had alleged were false. And then  
25 they added 63 more after summary judgment was

1 over.

2 In addition, I see a coming mess on  
3 discovery related to AI Chatbots. The parties are  
4 still meeting and conferring about that and I'm  
5 hopeful that we can come to a resolution. But  
6 given the positions the State has been taking, I  
7 am concerned about it.

8 And so the reason that I'm raising this is  
9 we are very likely to be filing a motion to strike  
10 these new theories or, in the alternative, to  
11 delay the trial to give us a chance to take  
12 discovery into these new theories and add experts  
13 and have summary judgment.

14 And so we would like just the opportunity  
15 now for the Court to set a briefing schedule. I'm  
16 not here to argue the substance of the issue. I  
17 just would like an expedited briefing schedule.

18 THE COURT: All right. Thank you.

19 Ms. Singer.

20 MS. SINGER: Yes. I strongly disagree  
21 with how Mr. Huff has characterized this. And it  
22 was raised to us only very very recently. We have  
23 not had a chance to respond.

24 What the State provided were additional  
25 examples of misrepresentations within the

1 categories that have already been disclosed to  
2 Meta, some of which were revealed during  
3 discovery, some of which were more recent  
4 statements made by Meta, for example in rolling  
5 out safety, purported safety tools, that  
6 depositions taken in recent weeks have shown  
7 aren't actually effective. All of this has been  
8 known to Meta, has been explored in discovery.

9 There is no new theory of the case that is  
10 a surprise to Meta here or that experts on both  
11 sides haven't addressed.

12 So I just want to be absolutely clear on  
13 the record on those issues.

14 THE COURT: Sure. So let me just say  
15 this: Because as much as you would expect this  
16 judge at this point in this litigation to  
17 excitedly jump into quagmires related to AI  
18 Chatbots without any briefing before me, I'm going  
19 to resist that temptation.

20 What I will say, Mr. Huff, is that it  
21 sounds as if you have identified a concern and you  
22 have a desired remedy to request. I will  
23 certainly authorize you to file that with an  
24 expedited tag on it. But before doing that,  
25 confer in good faith. If you all can reach a

1 reasonable briefing schedule, great. And again,  
2 this could well be one of those try to get it in  
3 in December. Because you've already got, as I  
4 look at Odyssey, plenty for January.

5 But confer in good faith about how we  
6 could address this as soon as possible.

7 And yes, you may say it's expedited. And  
8 at the very least, what that means is we will be  
9 looking for a hearing setting whilst the briefing  
10 schedule is going. Given how close we are to  
11 trial, I would encourage the plaintiffs as well to  
12 perhaps relinquish some of their response time to  
13 speed up when we can get this matter set.

14 So confer in good faith on that. And then  
15 if there is a filing, I will not be surprised and  
16 we'll work to get it in as soon as we can.

17 MR. HUFF: Thank you, Your Honor.  
18 Appreciate that.

19 MS. SINGER: And, Your Honor, of course we  
20 will do our best, mindful of the fact that we also  
21 have a holiday coming up. I know Your Honor  
22 intends to honor it. And we would like to do the  
23 same for our team.

24 THE COURT: Sure. I am not thinking --  
25 you will not find a frustrated judge if briefing

1 has not commenced by Thanksgiving.

2 But what I will be saying, I would hope  
3 that maybe you can confer prior to then and maybe  
4 have a schedule that you can alert me to via a  
5 proposed text letting me know, hey, when holidays  
6 are -- or at least the first holiday of the  
7 holidays is done, here is what we're going to be  
8 filing and when, and, judge, we're going to need a  
9 setting in some reasonable time.

10 And I think -- I mean, all of you share a  
11 common interest, I would think, in some respects.  
12 And that is, helping the Court to make sure that I  
13 know what is coming and that I can keep a rolling  
14 schedule going so that at the end of the day, I  
15 don't have a pile-up of issues that is going to  
16 make it tempting to say, I don't think I can get  
17 through this in time, you're going to have to  
18 vacate this trial schedule and push it back.

19 I think that making sure that I can, to  
20 the extent possible, keep things rolling and be  
21 ready on February 2nd in this matter is certainly  
22 the goal of the Court.

23 MS. SINGER: Absolutely.

24 THE COURT: So please do that, that  
25 conferral, and help me keep things on the rails to

1 the extent possible.

2 MS. SINGER: Absolutely. And, Your Honor,  
3 we certainly share that goal adamantly.

4 And I would also just suggest to Meta's  
5 counsel that we ought to meet and confer on this  
6 issue, not only on a briefing schedule, but in an  
7 effort to try to narrow disputes that are going to  
8 the Court, which we have not done on this yet.

9 THE COURT: All right. Well, I would love  
10 narrowing, I love scheduling, when there is  
11 conferral.

12 Please do that. I have no doubt you will.

13 And then keep me apprised as to this and  
14 other -- the other issues that are undoubtedly  
15 afoot. Also, obviously, Dr. Sattizahn, if I'm  
16 going to have -- you know, if you know there is  
17 objections coming close on the heels of that  
18 deposition, again, I've disclosed my jury trial  
19 schedule, so you will know sort of within that  
20 time, to the extent that objections and responses  
21 can be submitted to me, that's great, because that  
22 is time that I won't be able to be considering  
23 them anyway. But I would certainly do my part to  
24 try to set that matter so that everyone knows, as  
25 far advance to trial as possible, what is

1 admissible and -- under 512 and what is not.

2 So that might be of use.

3 MS. SINGER: Your Honor, may I raise one  
4 other scheduling issue?

5 THE COURT: Certainly.

6 MS. SINGER: Just to keep it clean as you  
7 balance all of these different demands.

8 And that is, we had talked several  
9 hearings ago, I think, about meeting with the  
10 Court to discuss trial technology logistics and  
11 things like that. The Court day, all of those  
12 kinds of issues.

13 THE COURT: Yes.

14 MS. SINGER: And I know you had suggested  
15 the possibility of doing that in December as well.  
16 I think that would be very helpful to the parties.

17 THE COURT: Well, let me just say on that  
18 front: Absolutely. And this is true for all  
19 counsel, all technologists, all -- anyone who is  
20 interested that is involved in this case. You can  
21 contact Ms. Sossman. You don't have to all do it  
22 together. But we've got an IT department here  
23 that is extremely helpful. I wouldn't be shocked  
24 if you all have your own departments and you want  
25 to bring in folks to make sure that our setup is



1 compatible. All of that is fine and I encourage  
2 it.

3 And one of the -- well, I will say:  
4 Certainly in particular in December, I think there  
5 will be more opportunities to do that. And by the  
6 way, another option here that is always true,  
7 which is I -- if it makes sense at some point to  
8 have a hearing in this matter in person, where we  
9 can argue in person and also check out the  
10 courtroom and do those things on your end, I'm  
11 happy to do that as well.

12 So I'm not as addicted to watching you all  
13 on TV as it might seem from how things have  
14 worked.

15 But that is another possibility.

16 But absolutely, reach out to Ms. Sossman,  
17 reach out to our IT here at the court. That is  
18 Dave Madrid and Joe Moore.

19 They will absolutely help you to make sure  
20 that -- we don't want things to get bogged down  
21 because we didn't have the right adapter or any of  
22 those sorts of things.

23 And then, let's see, similarly on that  
24 front, I guess maybe I'm assuming something, it's  
25 not critical at the moment. But am I correct that

1 you all will be hiring a court reporter to  
2 transcribe these proceedings as opposed to going  
3 with FTR.

4 MR. HUFF: I don't think we've discussed  
5 that yet, Your Honor. But we will add that to our  
6 log pile of conferrals.

7 THE COURT: Okay. Well, just know that  
8 from the Court's perspective, while we're dealing  
9 with these other matters in corners, that is a  
10 helpful thing to know from this end.

11 And maybe it would be a good time for you  
12 all to be considering that.

13 Just know one more piece and I have to go,  
14 because I know I've got folks waiting on another  
15 hearing. But if you go the route of court  
16 reporter, I will say, that is fine with me. That  
17 is not terribly uncommon in this division.

18 But I do require an order, stipulated  
19 order, that you're going that route and that, most  
20 importantly for the Court, the court reporter  
21 understands that if there is, hard to imagine, if  
22 there is an appeal following trial, that the court  
23 reporter's transcript is the record proper and  
24 will be provided for that purpose. Because I've  
25 never run into it, but I think some judge

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1 somewhere in the State ran into an issue where the  
2 court reporter said, hey, judicial branch, pay me  
3 to get -- that is not a situation that I want to  
4 find myself in.

5 So just be aware of that as one more thing  
6 to talk about and confer.

7 MR. HUFF: We'll do that, Your Honor,  
8 thank you.

9 THE COURT: All right. Anything else in  
10 this matter for this morning?

11 MS. SINGER: Not for the State, Your  
12 Honor.

13 MR. HUFF: Not for Meta either, Your  
14 Honor.

15 THE COURT: All right. Well, please keep  
16 up the good and helpful work of letting me know  
17 what is afoot and what the Court needs to be aware  
18 of and consider.

19 And we will continue to try to schedule  
20 these sorts of hearings when you are available and  
21 when the Court can do it to try to make sure that  
22 things aren't piling up and you all are able to  
23 keep -- continue to move forward.

24 MR. HUFF: Thank you, Your Honor.

25 Have a good holiday.

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1 THE COURT: You too. And with that, we  
2 are adjourned in this matter.

3 (End of audio file.)  
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